

## **REMARKS**

Claims 1-17 and 38-45 are pending in the case, claims 18-37 having previously been canceled and claim 45 having previously been added. Claims 8 and 10 have been withdrawn from consideration through restriction. The Office rejected:

- claims 1-5, 7, 11-17, 38 and 40-45 as anticipated under 35 U.S.C. §102(b) by U.S. Letters Patent 6,219,620 (“Park”);
- claim 6 as obvious under 35 U.S.C. §103(a) by Park in combination with U.S. Letters Patent 4,885,724 (“Read”); and
- claims 9 and 39 as obvious under 35 U.S.C. §103(a) by Park in combination with U.S. Letters Patent 6,226,601 (“Longaker”).

Applicant maintain their traversal of each of the rejections.

### **I. ALL CLAIMS ARE ALLOWABLE**

The Office maintains three sets of rejections: one set of anticipation rejections and two sets of obviousness rejections. All of the rejections rely on U.S. Letters Patent 6,219,620 (“Park”) to anticipate the independent claims 1 and 38. Applicant earlier argued that both of the independent claims 1 and 38 contemplate multiple transmitters in a cell and that one of those transmitters serve as the gateway to the independent pathway for all the transmitters—*i.e.*;

- claim 1 recites, “a plurality of cells each containing a portion of the data sources and the transmitters with which they communicate, one of the transmitters within each cell also serving as a gateway during operation for receiving data transmitted from the other data source transmitters within the cell and transmitting the data collected within the cell;
- claim 38 recites, “the seismic data sources being organized into a plurality of cells, one of the transmitters within each cell also serving as a gateway for receiving data transmitted from the other data source transmitters within the cell”.

In each case, there are multiple transmitters in each cell, the data sources communicate their data to one of the transmitters. One of the transmitters transmits data from the other transmitters, and thereby serves as a gateway for the others. When the cited art is properly construed and applied, it fails to disclose these limitations.

The Office maintains that Park et al. teaches the subject limitations. More particularly, the Office states:

Applicant argues that the CAN 16 of Park is not associated with data sources in the same way as the RAUs 10 because it is not a "data transmitter." Applicant argues that the CAN 16 can therefore not serve as a gateway [sic] as claimed. This argument is not persuasive because the claims do not specify what the association between data sources and transmitters is. The claims do not specify any physical relationship between the transmitters and the sources. Because the CAN is associated with the data sources (geophones) in that it receives and transmits data from the geophones, it meets the limitation of a transmitter associated with the data sources. The claims do not state that all data transmitters must be associated with the data sources in the same way as argued by applicant. The claims only require an association, but do not state what it is or that it must be the same for all data transmitters. Therefore, the CAN 16 of Park reads on a data transmitter that acts as a gateway [sic]. Applicant's arguments related to MPEP 2114 are not persuasive as the claim language is functional language which does not limit the structural limitations of applicant's apparatus claims. Applicant is claiming the apparatus and not the method, and the "whereby" and "capable of" clauses used in the claims do not differentiate the structure of the apparatus from the structure of the prior art. The clauses do not limit the structure of the apparatus, and therefore do not distinguish the prior art in terms of structure rather than functional language.

(Office Action dated February 24, 2009, Continuation Sheet, emphasis added) However, this reasoning no longer applies.

Applicant has amended the claims to "specify the association" between the transmitters and the data sources. As now recited, the data sources "communicate" with the transmitters. The claims therefore now expressly require three exchanges of information during collection: (1) data communicated from the data sources to the transmitters, (2) transmission of data from non-gateway transmitters to the gateway transmitter, and (3) transmission of data from the gateway transmitter. Previously, the Office has identified the communication from the data source to the transmitter—exchange (1) above—as the communication to a transmitter—*i.e.*, as exchange (2) above. As stated in the quotation above, the Office leveraged an overly and unjustifiably broad construction of the phrase "associated with" to exclude the exchange (1) now expressly recited. This construction is no longer tenable in light of the amendments above. Park, et al. only teaches two exchanges of information during collection, and therefore cannot teach the subject limitations.

The amendments have also mooted the Office’s improper application of M.P.E.P. §2114. The claims no longer contain the phrase “capable of” or the term “whereby”. Instead, the claims now recite that the functionality occurs when the apparatus is “in operation” or “during operation.” This amendment is amply supported throughout the specification and drawings, and so no new matter is added. Note that this is alternative rather than narrowing phrasing, and so the amendments do not narrow the scope of the limitations. The claim language clearly limits the apparatus in that it requires the apparatus to perform the recited function when in operation.

For either an anticipation or an obviousness rejection, the cited art must teach all the limitations of the claims. M.P.E.P. §§706.02(j), 2131; *In re Bond*, 15 U.S.P.Q.2d (BNA) 1566, 1567 (Fed. Cir. 1990) (anticipation); *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (CCPA 1974) (obviousness). A careful comparison of Park, et al. and these claims reveals that Park, et al. in fact fails to anticipate them. All of the rejections therefore fail regardless of whether for anticipation or obviousness.

## **II. THE RESTRICTION REQUIREMENT IS STILL IMPROPER**

Applicant once again requests reconsideration of the restriction requirement. The Office held there were no shared special technical features “as evidenced by the rejections presented below.” (Office Action dated April 11, 2008, “Detailed Action”, p. 2) However, as is established above, the analysis upon which the Office relies rests upon the Office’s mistaken construction of the claims and/or the references and an error of law. Accordingly, Applicant respectfully submits that a “special technical feature” is present. Furthermore, that feature is present in the independent claims which are allowable and generic to the withdrawn claims. The withdrawn claims should therefore be rejoined.

## **III. CONCLUDING REMARKS**

Applicants therefore respectfully submit that the claims are in condition for allowance, and requests that they be allowed to issue. The Examiner is invited to contact the undersigned attorney at (713) 934-4053 with any questions, comments or suggestions relating to the referenced patent application.

Respectfully submitted,

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